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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

A-2

No. 79-145

THE STATE OF CALIFORNIA, Petitioner

v.

PAUL MICHAEL MINJARES, Respondent

MEMORANDUM IN OPPOSITION TO RENEWED APPLICATION FOR STAY AND IN OPPOSITION TO PETITION FOR CERTIORARI

On July 6, 1979, Mr. Justice Stevens denied the State's application for a stay herein. By letter of July 24, 1979, the State has requested reconsideration of its stay application and simultaneously filed a petition for writ of certiorari.

Both the renewed application for stay and the petition for certiorari are without merit and should be denied. The California Supreme Court correctly concluded that the result in the instant case follows a fortiori from the principles affirmed and reaffirmed by this Court in United States v. Chadwick (1977) 433 U.S. 1 and Arkansas v. Sanders (June 20, 1979) 47 U.S.Law Week 4783. There is no important legal question that merits further attention by

this Court. The State's petition simply rests on its quarrel with the California Supreme Court's reading of the record.

In an effort to construct some factual distinction between this case and Sanders and Chadwick, the State attempts to suggest that the search in the present case occurred in the course of "hot pursuit" by the police of a second suspect (Petition for Writ of Certiorari, pp. 14-17). There is no record support for this contention. In its response to our opposition to its initial stay application, the State admitted that "petitioner has never argued that the tote bag search occurred 'immediately' after respondents' arrest" (p. 2).

In fact, the search did not occur at the scene of the arrest immediately after defendant's apprehension at approximately 9:00 P.M., but more than one hour later after the police had towed the car to a city corporation yard, at approximately 10:30 P.M. (R.T. 368-370; 351-357). Cases such as Warden v. Hayden (1967) 387 U.S. 294 (Petition, p. 16) which involved immediate pursuit of a fleeing suspect "within minutes" (387 U.S. 297) of the commission of the crime, are therefore wholly inapposite.

The State's petition fundamentally rests on the Attorney General's belief that the advantages of prompt investigation of crime outweigh the reasons for requiring the slight delay necessary to obtain a warrant. However, it is settled that desire for prompt investigation of crime cannot justify dispensing with the warrant requirement (Mincey v. Arizona (1978) 98 S.Ct. 2408, 2414).

Not only was there no hot pursuit in the instant case, but there was no other "exigency" that could justify

the delayed warrantless intrusion into a closed personal effect. The California Supreme Court correctly recognized that there was not the slightest danger of any destruction of evidence, including any evidence that might identify other participants in the robbery. Although the State selectively quotes from the record, it omits the testimony of the police that made it clear that their reason for believing that it was necessary to enter the car trunk without a warrant in the first place was because they thought a second suspect might be hiding inside the trunk itself:

"Q. Why was it that you wanted to enter the trunk?

A. To see if there was a suspect in the trunk.

Q. Any other reason?

* * * *

"THE WITNESS: Basically that was our intent of the entry, was that suspect" (Supp.R.T., p. 30) (emphasis supplied).

The assumption that there was a second suspect hiding inside the trunk proved to be incorrect. As the California Supreme Court correctly held, there was no remaining exigency such as hot pursuit or imminent destruction of evidence in the tote bag that could justify dispensing with a warrant.*

Nor is there any question of "retroactivity" as the State contends (Petition, p. 22). The cases cited by the State (Petition, p. 23) involved searches incident to

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* The State also apparently contends that this Court should grant certiorari on the theory that the California Supreme Court misconstrued its own prior decisions in People v. Gilbert (1965) 63 Cal.2d 690, 408 P.2d 365 and Guidi v. Superior Court (1973) 10 Cal.3d 1, 513 P.2d 908. There is no merit to that contention.

arrest or otherwise are plainly inapposite. It is noteworthy that in Arkansas v. Sanders, this Court agreed with the California Supreme Court in the instant case in applying long-standing principles of search and seizure law to a search that occurred prior to this Court's decision in Chadwick. That is because Chadwick simply reaffirmed established search and seizure principles and announced no new Constitutional rule (see United States v. Schleis (8 Cir. 1978) 582 F.2d 1166, 1173-1174).

Respectfully submitted,

C. DOUGLAS FLOYD
225 Bush Street
Mailing Address: P.O. Box 7880
San Francisco, CA 94120
Telephone: (415) 983-1000

DANE J. DURHAM
555 California Street, Suite 3400
San Francisco, CA 94104
Telephone: (415) 391-4500

JOHN PACE
Public Defender's Office
24405 Amador Street
Hayward, CA 94544
Telephone: (415) 881-6431

SUPREME COURT OF THE UNITED STATES

CERTIFICATE OF SERVICE BY MAIL

I, CHESNEY DOUGLAS FLOYD, certify as follows:

I am an active member of the bar of this Court and am not a party to the within cause;

My business address is 225 Bush Street, San Francisco, California 94104;

On August 3, 1979, I served all parties required to be served by depositing a copy of the attached Memorandum in Opposition to Renewed Application for Stay and in Opposition to Petition for Certiorari in an envelope addressed to:

George Deukmejian, Attorney General
Patricia D. Benke, Deputy Attorney General
110 West A STreet, Suite 600
San Diego, California 92101

which envelope, with airmail postage thereon fully prepaid, was then sealed and deposited in the United States mail in the City and County of San Francisco, State of California.

Chesney Douglas Floyd